

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In Re: Application of

CSM WIRELESS, LLC

For Grant of Licenses for Which it
was the High Bidder in Auction 58

File No. 0002069855
WT Docket No. 05-149
Report No. AUC-58

RESPONSE TO SUBMISSIONS OF AMEER FLIPPIN

By this submission, CSM Wireless, LLC ("CSM"), by counsel and pursuant to 47 C.F.R. § 1.2108(c) and the Commission's *Public Notice*, DA 05-771, released March 25, 2005, urges the Commission to dismiss promptly the various documents submitted by Mr. Ameer Xenos Flippin¹ with reference to the high bidders in Auction No. 58.²

¹ The documents to which CSM is responding include but may not be limited to: (a) Ex-Parte Motion and Petition to Deny Against All Long-Form Applications Of Opposing Entities Which Placed Bids Less Than Or Equal To In Value Of Bids Placed By Ameer Flippin, An Individual In Auction No. 58, In Accordance with 47 CFR 1.2108; Attached Listing of Long-Form Applications Being Motioned To Deny By Pro Se Bidder Ameer Flippin ("Flippin Petition to Deny"), dated March 10, 2005 (b) Affidavit in Support Of Flippin Petition To Deny ("Flippin Affidavit"), dated March 10, 2005 (c) Certificate of Mailing, dated March 14, 2005 (d) Ex Parte Motion And Petition To Stay The Issue Of All Broadband PCS Licenses in Auction No. 58, Pending An Emergency 'Review De Novo' Of All Actions, Decisions, And Orders Issued By The Federal Communications Commission Adversely Affecting Ameer Xenos Flippin And Designating The Case For Hearing By An Administrative Law Judge At The Federal Communications Commission; And Memorandum In Support Thereof By Pro Se Appellant Ameer Flippin ("Flippin Stay Petition").

² CSM is filing this response out of an abundance of caution and in doing so does not concede that any of the filings by Ameer Flippin constitute timely and duly filed objections to the CSM application. If the Commission elects to treat the CSM application as contested, CSM asks the Commission to utilize its authority under 47 C.F.R. § 1.1200(a) and declare the "meet and disclose" *ex parte* rules specified in 47 C.F.R. Section 1.206 to apply to the CSM application. This would be appropriate since Mr. Flippin has raised no application-specific issues with regard to CSM.

The various filing, regardless of how labeled, are nothing more than follow-up challenges to the Commission's proper determination not to grant Mr. Flippin a waiver of the Commission's rules that would extend the time during which Mr. Flippin could apply for the auction and make the required up front payment. The Commission's reasoning for the denial was both sound and well articulated in the Commission's letter of denial released January 25, 2005.³ Thus, other than to note that the Commission's rules regarding participation in an auction are both well-articulated and generally understood, there is no need for further comment on this matter.

There are at least three other threshold reasons why Mr. Flippin's Petition must be dismissed. First, Mr. Flippin is not a qualified applicant in Auction No. 58.⁴ Consequently, he has no standing to challenge any of the winning bidders. *See e.g. Nextel License Acquisition Corp.*, 13 FCC Rcd 11983, 19888 (WTB 1998); *Western Communications Services, Inc.*, 17 FCC Rcd 24636, 24636-37 (CWD 2002). It is well settled in the law that "an entity that was not qualified to bid in particular markets in an auction has no standing to file a petition to deny the winning bidders' applications in those markets." *Alaska Native Wireless L.L.C.*, 18 FCC Rcd 11640, 11644, para. 11 (2003). Second, Mr. Flippin has failed to comply with the most basic requirements of 47 U.S.C. § 309(d)(1), which govern petitions to deny. Among other things, he has failed to provide specific allegations of fact sufficient to show that petitioner is a party in

³ Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Ameer Flippin, DA 05-173, January 25, 2005. Mr. Flippin also moved for a stay of Auction No. 58 in the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit"), but on January 25, 2005 that Court summarily denied that motion. *In re: Ameer Flippin, Petitioner*, No. 05-1026, Per Curiam Order, January 25, 2005.

⁴ Mr. Flippin's name does not appear in either the December 10, 2004 notice listing parties who timely filed FCC Form 175 applications or in the January 11, 2005 notice listing the applicants deemed qualified to bid in Auction

interest and that a grant of the Application would be prima facie inconsistent with the public interest. Alaska Native Wireless, L.L.C., 17 FCC Rcd 4231, 4235 (WTB 2002). In the Petition, Mr. Flippin has provided no relevant or material facts or arguments.⁵

Additionally, Mr. Flippin has failed to abide by the specific detailed instructions for filing petitions to deny Auction No. 58 long form applications as set forth in 47 C.F.R. § 2108 and in the *Public Notice*, DA 05-771 released March 25, 2005. That notice required petitions to be filed during a filing window that opened on March 25 and closed on April 4, and for the submission to be made electronically through the Commission's Electronic Comment Filing System (ECFS) or by paper at specific locations or addresses. The various e-mail submissions made by Mr. Flippin do not satisfy these requirements.⁶

No. 58. See *Public Notice*, DA 04-3270, released October 15, 2005; *Public Notice*, DA 04-3918, released December 16, 2004.

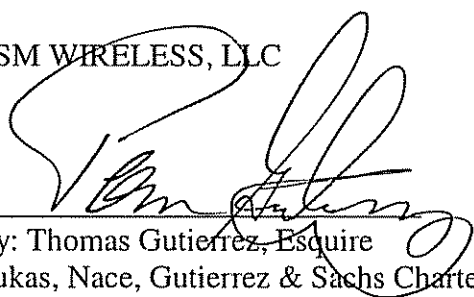
⁵ Because there are no facts presented in the Petition, there are no allegations of fact or denials thereof that require an affidavit pursuant to 47 C.F.R. § 1.2108(c).

⁶ 47 C.F.R. § 1.47(d) which governs the service of documents and proof of service, allows service by electronic e-mail only with the consent of the served party. CSM never consented to such service, and is aware of no such consent by the Commission (except to the extent that pleadings are duly filed through ECFS).

For all of the above reasons, the Petition must be dismissed. Given that (a) the auction has been complete; (b) long form Applications have been filed; (c) no other challenges of any nature have been raised against the captioned applications; and (d) the captioned applications have been paid for in full, the Commission should move promptly to dismiss the Petition, and to grant the CSM application.

Respectfully Submitted,

CSM WIRELESS, LLC



By: Thomas Gutierrez, Esquire
Lukas, Nace, Gutierrez & Sachs Chartered
It's Attorney

April 11, 2005

CERTIFICATE OF SERVICE

I, David Crawford, do hereby certify that, on this 11th day of April, 2005, I caused the foregoing "RESPONSE TO SUBMISSIONS OF AMEER FLIPPIN" of CSM Wireless, LLC to be: (1) filed electronically with the Federal Communications Commission; and (2) served via email or first-class United States Mail, postage prepaid, on the following:

Mr. Ameer Flippin (via U.S. Mail)
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Best Copy and Printing, Inc. (via email)
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A handwritten signature in black ink, appearing to read "Michael Connelly", is written over a horizontal line.